

DERWOOD STEWART d/b/a,
STERWART'S NURSERY AND FARM

VS.

Defendants.

Magistrate Judge Susan K. Lee

Defendants, Federal Crop Insurance Corporation, an agency of the United States Department of Agriculture, the Risk Management Agency, also an agency of the United States Department of Agriculture, and the United States Department of Agriculture (“The Federal Defendants”), by and through Gregg L. Sullivan, Acting United States Attorney for the Eastern District of Tennessee, pursuant to this Court’s Order of May 11, 2010 (Doc. No. 20) tenders this reply brief in support of the Government’s contention that this case should be reviewed on the record.

ARGUMENT

The *Hanmit* case relied on by the plaintiff is incorrectly decided and has been overturned by subsequent law.

As set out in the brief tendered herein (Doc. No.22) it is the position of the Federal Defendants that the case primarily relied on by the Plaintiffs, *Hammit v. FCIC*, 712 F. Supp. 832 (D. Colo. 1989), may be incorrectly decided and, in any event, is no longer valid in light of subsequent law (See, Doc. No. 22 at pages 10-11). The only circuit that has cited it has noted its suspect holding. See, *Clarke v. FCIC*, 2 F.3d 1149 n.1 (4th Cir. 1993). It is clear that creating a National Appeals Division, and providing for full and complete administrative hearings, is logically inconsistent with repeating the entire process in the Federal courts. Likewise, the mere fact that judicial review is authorized does not mandate retrial *de novo*. As noted in defendant's initial memorandum, this case is not materially different from a plethora of other Administrative Procedures Act ("APA") record reviews that follow agency decisions where there is an administrative hearing and agency appeals process.

CONCLUSION

For the reasons stated in their prior memorandum, the Federal Defendants contend the appropriate review is on the record.

Respectfully submitted,

GREGG L. SULLIVAN
Acting United States Attorney

By: s/M. Kent Anderson
M. KENT ANDERSON (BPR #004199)
Assistant United States Attorney
1110 Market Street, Suite 301
Chattanooga, Tennessee 37402
Kent.Anderson@usdoj.gov
(423) 752-5140

OF COUNSEL:

Steven Youngpeter
U.S. Department of Agriculture
Office of General Counsel
4121 Carmichael Road
Suite 205, Sterling Centre
Montgomery, AL 36106

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2010, a copy of the foregoing Reply Brief In Support of Record Review under the APA was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to plaintiffs' attorney, who is registered as a user of the electronic case filing system as indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

s/M. Kent Anderson
M. KENT ANDERSON
Assistant United States Attorney